

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. KWASNICK and U.S. POSTAL SERVICE,
POST OFFICE, Hoffman Estates, IL

*Docket No. 99-646; Submitted on the Record;
Issued June 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has greater than a four percent permanent impairment of his right hand, for which he has received a schedule award.

The Office of Workers' Compensation Programs accepted that on September 15, 1995 appellant, then a 49-year-old letter carrier, sustained a trigger finger of his right long and right ring fingers due to repetitive motion in organizing the mail.

On March 18, 1998 appellant requested a schedule award for permanent impairment of his right hand.

By report dated April 6, 1998, Dr. Keith E. Schroeder, a Board-certified orthopedic surgeon, noted that appellant was being followed for tenosynovitis and long finger proximal interphalangeal joint synovitis. Dr. Schroeder noted that motion in appellant's long and ring fingers was restricted to 90 degrees of flexion of the metacarpophalangeal (MP) joints and 90 degrees of flexion of the proximal interphalangeal joints (PIP). Dr. Schroeder noted:

"According to the American Medical Association, Guides to the Evaluation of Permanent Impairment, [appellant] has 6 percent loss of flexion of the proximal interphalangeal joints of the long and index fingers for a total of 12 percent in the right hand. He still has ongoing tendinitis and tenosynovitis with triggering but is tolerating this at this point. He has reached maximum medical improvement as far as conservative treatment for this problem."

The Office decided to refer appellant, together with a statement of accepted facts and the relevant case record to Dr. Julie M. Wehner, a Board-certified orthopedist, for a second opinion evaluation on the extent of appellant's right hand impairment.

By report dated May 15, 1998, Dr. Wehner reviewed appellant's history, evaluated his right hand, noted triggering of the long finger but not of the ring finger, noted MP

extension/flexion both the long and ring fingers to be 0 to 87 degrees, which when rounded out equaled 90 degrees which was normal flexion of the MP joint. She noted that PIP flexion of both fingers was 0 to 87 which equaled 90 degrees, which was short of the normal flexion of 100 degrees. Dr. Wehner referred to Figure 21 on page 33 of the A.M.A., *Guides* fourth edition (1993) and determined that this active flexion loss equated with a six percent impairment of the middle and ring fingers. She further noted that DIP (distal interphalangeal) motion in both fingers was 0 to 70 degrees, such that there was no impairment of DIP range of motion. Dr. Wehner noted:

“As stated on page 35, determining impairments of several digits if two or more digits of the hand are involved after calculating the impairment for each impairment of each digit, hand impairments are added. Therefore, a 6 percent impairment of flexion of the PIP joint of both fingers is added to obtain a 12 percent impairment for the hand. This is converted to the upper extremity based on page 19, a percent impairment of the hand at 12 percent equates to an upper extremity impairment of 11 percent.”

Dr. Wehner opined that appellant's condition was permanent in nature, that short of surgery, no further improvement would occur and that appellant was stationary.

On June 30, 1998 the Office referred appellant's record to the Office medical adviser for his opinion as to appellant's degree of permanent impairment.

By report dated July 6, 1998, the Office medical adviser used the range of motion values for the MP, PIP and DIP joints from appellant's medical reports of record and determined that he had a 14 percent impairment of his right long finger and a 14 percent impairment of his right ring finger. The Office medical adviser noted:

“Using Tables 1 and 2 on page 3/18-19, the 14 percent long finger permanent impairment equals 3 percent hand permanent impairment and the 14 percent ring finger permanent impairment equals 1 percent hand permanent impairment. Thus four percent hand permanent impairment equals four percent upper extremity permanent impairment when using Table 2 on page 3/19 of the A.M.A., *Guide[s]*.”

The Office medical adviser opined that appellant's condition had plateaued as of the January 16, 1997 office visit which would represent maximum medical improvement.

On November 6, 1998 the Office granted appellant a schedule award for a four percent permanent impairment of his right upper extremity, for the period January 16 to March 25, 1997 for a total of 9.76 weeks of compensation.

The Board finds that appellant has no greater than a four percent permanent impairment of his right hand, for which he has received a schedule award.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, neither the Act nor its regulations specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* fourth edition have been adopted by the Office for evaluating schedule losses, and the Board has concurred in such adoption.⁴

In the instant case, appellant argues that he is entitled to a greater schedule award for right hand impairment based upon the percentage of impairment determined by Dr. Wehner. However, the Board notes that Dr. Wehner did not correctly apply the A.M.A., *Guides* in making her impairment determination. She stated in her opinion that the degree of impairment derived from Figure 21 on page 33 for each finger should be added to determine the percentage of impairment of the hand in accordance with the text appearing on page 35. Dr. Wehner therefore added 6 percent to 6 percent to arrive at a 12 percent right hand impairment, which equated with an 11 percent impairment of the right upper extremity. However, the Board notes that the text on page 35 states that, if two or more digits of the hand are involved, they are evaluated separately and then, *using Table 1 (page 18), find the hand impairment contributed by each digit*, (emphasis added) add the hand impairments contributed by each digit to obtain the total hand impairment. In the instant case, Dr. Wehner did not perform this procedure, omitting any calculation of appellant's hand impairments in accordance with Table 1 on page 18 of the A.M.A., *Guides*. She, therefore, improperly applied the A.M.A., *Guides* and her impairment determination is inaccurate and of diminished probative value.

The Office medical adviser, however, using the range of motion values derived from appellant's medical reports of record, followed the proper procedure and correctly applied Table 1 on page 18, and determined that appellant's 14 percent impairments of both of his affected ring and long fingers, translated in accordance with Table 1, page 18, to a 1 percent impairment of the hand and a 3 percent impairment of the hand, respectively. He then properly followed the instructions on page 35 for determining impairments where several digits are involved, and added the hand impairments to arrive at a four percent impairment of the right hand which translated to a four percent impairment of appellant's upper extremity in accordance with Tables 2 and 3, pp. 19-20.

As the Office medical adviser was the only physician of record to properly apply the A.M.A., *Guides*, his opinion as to the extent of appellant's total permanent right upper extremity

¹ 5 U.S.C. § 8101 *et seq.*; *see* 5 U.S.C. § 8107(c).

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *James J. Hjort*, 45 ECAB 595 (1994); *Thomas D. Gauthier*, 34 ECAB 1060 (1983).

impairment constitutes the weight of the medical opinion evidence of record and establishes that appellant has no greater than a four percent right upper extremity impairment, for which he has received an appropriate schedule award.⁵

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 6, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 26, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁵ See, e.g., *Annette M. Dent*, 44 ECAB 403 (1993) (medical opinion not based upon the appropriate standards adopted by the Office, i.e., proper application of the A.M.A., *Guides*, is of little probative value in determining the extent of a claimant's permanent impairment.)